

## **REMARKS**

In the Office Action dated July 1, 2004, an informality in claim 2 was noted, which has been corrected.

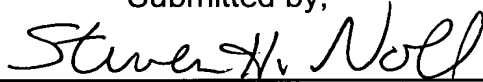
Claims 1-10 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement, and under 35 U.S.C. §101 because the disclosed invention was stated to be inoperative and therefore lacking utility. The basis for both of these rejections was that the Examiner believed it was inaccurate or incorrect to refer to the acoustic transducer as being "transparent to x-rays" when the only disclosed materials for the electrodes are aluminum and stainless steel, which are both known to be radiopaque. The Examiner noted that the claims failed to set forth that the electrodes are "substantially transparent" to x-rays.

Claim 1 has been amended to state that the electrodes are "substantially transparent" to x-rays, which is consistent with the arguments in support of patentability set forth in Applicants' previous response. For factual substantiation that electrodes composed of aluminum or stainless steel, having a thickness in the micrometer range, are "substantially transparent" to x-rays, the Declaration of one of the inventors (Josef Reitter) is submitted herewith pursuant to 37 C.F.R. § 1.132. The information provided in this Declaration is submitted to overcome the rejections under §112, and §101.

Until receiving the last Office Action, Applicants had no reason to believe that the virtually insignificant amount of x-ray attenuation that is produced by an aluminum or stainless steel electrode having a thickness in the micrometer range meant that the description of such an electrode as being "transparent" to x-rays would be considered inaccurate. Moreover, until receiving the last Office Action,

Applicants had no reason to believe that submission of a Declaration under 37 C.F.R. § 1.132 would be necessary in order to establish this fact. Therefore, neither the Amendment to claim 1 made herein, nor the submission of the Declaration under 37 C.F.R. § 1.132 could have been made earlier. Moreover, the Amendment and the information contained in the Declaration under 37 C.F.R. § 1.132 are consistent with the arguments that have been previously made to support patentability, and therefore no new issues are raised by the Amendment, nor do these amendments require further searching. Entry of this Amendment after the final rejection is therefore proper, and the same is respectfully requested.

Submitted by,



(Reg. 28,982)

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SCHIFF, HARDIN LLP  
**CUSTOMER NO. 26574**  
Patent Department  
6600 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606  
Telephone: 312/258-5790  
Attorneys for Applicants.